

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Whitney Beber	Team: Squad #9	CCRB Case #: 201804049	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/18/2018 9:30 AM	Location of Incident: In front of § 87(2)(b)	Precinct: 45	18 Mo. SOL 11/18/2019	EO SOL 11/18/2019	
Date/Time CV Reported Sun, 05/20/2018 11:36 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/20/2018 11:36 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Eleodoro Perez	26923	948401	045 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gregg Albaum	02076	956376	045 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Eleodoro Perez	Abuse: Police Officer Eleodoro Perez searched § 87(2)(b)'s vehicle.	§ 87(2)(b)

## Case Summary

On May 20, 2018, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board via the online website.

On May 18, 2018, at approximately 9:30 a.m. in the vicinity of the 16-18 Parker Street, § 87(2)(b) was moving three cars for alternative parking. One of those vehicles, a blue 2004 Mazda 6, belonged to his girlfriend § 87(2)(b). After parking one of the vehicles, § 87(2)(b) was returning to § 87(2)(b)'s vehicle when he saw that the driver's side passenger door of her car was wide open. § 87(2)(b)'s vehicle was blocking approximately half of a pedestrian ramp. When he first noticed this, he was on the corner of Parker Street and Maclay Avenue walking towards Stearns Street. He saw Police Officer Eleodoro Perez, of the 45<sup>th</sup> Precinct, inside § 87(2)(b)'s car. **(Allegation A-Abuse of Authority, § 87(2)(g))** He started screaming and ran towards the car. When he was approximately 15-20 feet away from her car, Police Officer Perez exited her car through the open door. Police Officer Perez told § 87(2)(b) that he was going to issue him a summons for blocking a pedestrian ramp. Police Officer Gregg Albaum, also of the 45<sup>th</sup> Precinct, issued § 87(2)(b) a parking summons for blocking a pedestrian ramp.

§ 87(2)(b) provided one video of his conversation with Police Officer Albaum and Police Officer Perez following his observation of Police Officer Perez in § 87(2)(b)'s vehicle which was filmed with his cell-phone (Board Review 04). § 87(2)(b) provided a video filmed with her cell-phone which depicted a small portion of the conversation (which did not depict any FADO allegations) (Board Review 04). Video footage of this incident was obtained from both Police Officer Albaum's and Police Officer Perez's body worn cameras (Board Review 01 and 02).

## Findings and Recommendations

### **Allegation A-Abuse of Authority: Police Officer Eleodoro Perez searched § 87(2)(b)'s vehicle.**

As per § 87(2)(b)'s telephone statement, on May 18, 2018, at approximately 9:30 a.m. in the vicinity of § 87(2)(b), he was moving three cars for alternative parking. One of the vehicles, a blue 2004 Mazda 6, belonged to his girlfriend, § 87(2)(b). § 87(2)(b)'s vehicle did not have tinted windows and the only thing inside the car was a bouquet of flowers and a hat on the back seat. He began moving the cars one at a time. After parking the first two vehicles, he was returning to § 87(2)(b)'s vehicle when he noticed that the driver's side passenger door of her car was wide open. Her car had been parked for no more than seven minutes before he saw an individual in her car. When he ran towards the car he realized that the individual was Police Officer Eleodoro Perez. Police Officer Perez exited § 87(2)(b)'s vehicle, and closed the door. § 87(2)(b) asked Police Officer Perez why he was in the vehicle and what was going on. Another officer, identified as Police Officer Gregg Albaum told § 87(2)(b) that they were searching § 87(2)(b)'s car because they wanted to make sure that there was no one who was unconscious inside of the vehicle. Police Officer Perez told § 87(2)(b) that they were going to issue him a summons because of where the vehicle was parked. Police Officer Albaum issued § 87(2)(b) a summons for blocking the pedestrian ramp.

§ 87(2)(g)

§ 87(2)(b)'s car had been parked for no more than five minutes. § 87(2)(b) observed Police Officer Perez's entire body inside of § 87(2)(b)'s vehicle. When he was approximately 15-20 feet from § 87(2)(b)'s vehicle, he saw Police Officer Perez exit the vehicle through the open door.

Police Officer Perez told § 87(2)(b) that he was going to issue him a summons for blocking a pedestrian ramp, of which § 87(2)(b)'s vehicle was blocking approximately half. Police Officer Perez told § 87(2)(b) that the only reason he was getting a summons was because of the way he approached them. § 87(2)(b) explained that he did not see police officers or a police vehicle when he saw that the vehicle's door was open, and that he thought someone was breaking into the vehicle. Police Officer Perez told § 87(2)(b) that he should feel safe because if he had seen police officers in his car, he would be comfortable with it. Police Officer Albaum wrote and handed § 87(2)(b) the summons. When he did so, Police Officer Albaum stated, "Well like I said, we've been getting calls about the car."

§ 87(2)(b) did not witness the allegation. She provided her license plate number as § 87(2)(b) (Board Review 06).

Police Officer Albaum received a precinct assignment from the telephone switchboard operator for license plate, § 87(2)(b) for § 87(2)(b) (Board Review 08). Police Officer Albaum and Police Officer Perez went to § 87(2)(b). While he was there, Police Officer Albaum observed a vehicle with license plate § 87(2)(b) 20-25 feet away from § 87(2)(b). The vehicle was in the middle of the intersection and blocking the pedestrian ramp. The vehicle was unoccupied and the hazard lights were on, which raised his suspicions. Police Officer Albaum ran the license plate on his phone to determine whether the vehicle was stolen or "wanted." Police Officer Perez exited the vehicle to conduct an investigation. Police Officer Albaum did not see what Police Officer Perez did because he was checking the license plate. Police Officer Perez informed Police Officer Albaum during the incident that he had checked the vehicle to see if the car was locked, which it was not. § 87(2)(b) came down the street yelling at the officers and asking, "What the fuck are you doing?" "Why are you going through my car?" and "Why are you touching my car?" Police Officer Albaum did not see Police Officer Perez going through § 87(2)(b)'s vehicle or see him inside of § 87(2)(b)'s vehicle. Police Officer Albaum did not see Police Officer Perez enter § 87(2)(b)'s vehicle.

When Police Officer Albaum observed § 87(2)(b) approach the officers, he exited his vehicle and began looking through the windows of § 87(2)(b)'s vehicle (Board Review 07). Police Officer Albaum did not have a clear view inside of the vehicle because the car was very dirty inside. Police Officer Albaum and Police Officer Perez tried to explain to § 87(2)(b) that the car was in the middle of the intersection. He explained to § 87(2)(b) that they had received complaints about the car and that the area they were in experienced a lot of car thefts. They also explained that the car could have had a bomb or a dead or injured person inside. Police Officer Albaum stated they were doing their job to make sure the vehicle was safe. Police Officer Albaum activated his body-worn camera when he realized § 87(2)(b) was becoming very upset. Police Officer Albaum issued him one summons for blocking a pedestrian ramp.

§ 87(2)(g) Police Officer Perez suspected § 87(2)(b)'s vehicle was stolen given the vehicle's hazard lights were on, its position in the street, the fact that it appeared to have been parked "in a rush," and because many cars had been reported as stolen in that area. When Police Officer Perez exited his vehicle, he approached § 87(2)(b)'s vehicle, walked around it, and looked inside the car through the windows. The windows were not tinted and he could see clearly into the vehicle. Nothing obstructed his view into the car. Police Officer Perez ran the license plate to determine if the vehicle was stolen and did not receive a "positive hit." Police Officer Perez opened the driver's side door. Police Officer Perez stated that cars that are stolen often have damaged driver's side doors. Police Officer Perez opened the driver's side door as an extra precaution to make sure "nothing else was wrong" as a school was across the street and children were out and running around. Police Officer Perez did not open any other door of the car and he did not enter or search § 87(2)(b)'s vehicle at any point. When Police Officer Perez opened the driver's side door, § 87(2)(b) yelled, "What the fuck are you doing in my fucking car?" as he ran towards the officers. Police Officer Perez issued § 87(2)(b) a summons for either double-parking his vehicle or for blocking a pedestrian ramp. Police Officer Perez turned his body-camera on when he saw § 87(2)(b) approach the officers because § 87(2)(b) seemed to be upset based on how he was directing profanity towards the officers.

Summons number § 87(2)(b) was issued by Police Officer Albaum to a vehicle with the license plate number § 87(2)(b).

Body-worn camera footage was obtained but does not show Police Officer Perez enter § 87(2)(b)'s car. The footage depicts the conversation between § 87(2)(b) and the officers regarding what happened prior to § 87(2)(b) approaching the officers. Police Officer Perez is not heard acknowledging, or denying, entering § 87(2)(b)'s vehicle. § 87(2)(g)

People v. Harris, 160 A.D. 2d 515 established that opening a car door constituted a search (Board Review 09). In People v. Harris, the defendant was stopped by police officers who received a radio report of a man with a gun who had fired shots at the complainant, the report contained a detailed description of the man and his parked vehicle. The court ruled that an officer opening the car door and looking inside was a justified and minimal intrusion reasonably related police response to the detailed report of a man who had recently fired a gun.

People v. Torres, 74 N.Y. 2d 224 noted that a police officer's entry into a citizen's automobile and his inspection of personal effects located within are significant encroachments upon that citizens' privacy interest (Board Review 10). It noted that such intrusions must be both justified in their inception and reasonably related in scope and intensity to the circumstances which rendered their initiation permissible.

In People v. Vasquez, A.D. 2d 327, the court found that an officer's action of leaning into the car was not intrusive because it was an attempt to communicate better with the passenger and that as a protective measure, the police were allowed to open the door without any overt act by the defendant or his passenger (Board Review 11). The court noted that a valid investigative stop of a car may be accompanied, as a protective measure, by the opening of the car door and a directive

from the police to the occupants to exit the car. The court also noted that the opening of the car door lessens to a substantial degree the risk of injury to the officer from the use of a gun by a passenger. People v. Vasquez noted that in determining the unreasonableness of a search and seizure the total circumstances must be considered.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 13).
- Police Officer Perez has been a member of service for eight years and has been a subject two complaints and two allegations, none of which have been substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date